DOCUMENT RESUME

ED 216 073 UD 022 259

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TITLE Will Title IX Survive the '80s?: The Federal View.
INSTITUTION National Organization for Women, Washington, D.C. Project on Equal Education Rights.
PUB DATE 22 Mar 82
NOTE 21p.; Paper presented at the Annual Meeting of the American Educational Research Association (New York, NY, March 22, 1982).

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS Civil Rights; *Community Influence; Community Organizations; Elementary Secondary Education; *Equal Education; Federal Aid; *Federal Legislation; *Females; *Feminism; Higher Education; Lobbying; *Organizational Effectiveness; Political Influences; Public Policy; Sex Discrimination
IDENTIFIERS Civil Rights Act 1964 Title IV; *Reagan Administration; Title IX Education Amendments 1972; Womens Educational Equity Act

ABSTRACT

The existence of Federal laws and policies supportive of educational equity for women was challenged with the election of President Reagan in 1980. The Reagan Administration's philosophy of providing block grants to States threatened to eliminate the Women's Educational Equity Act (WEEA) and Title IV of the Civil Rights Act of 1964, both designed to foster equal education for women. At the same time there were moves to restrict Title IX of the Education Amendments of 1972, a law which provides legal protection against sex discrimination in Federally funded schools and colleges. The conservative proposals prompted women and community groups to organize and lobby for Congressional support of the laws. These organized efforts succeeded to the extent that when the final budget reconciliation was signed by the President, WEEA and Title IV had been extended for 3 more years, and no major changes had been made in Title IX. The experience with Federal policy on women's rights in education demonstrates the feasibility of mobilizing the grassroots constituency and persuading conservatives in Congress to support feminist causes. At the same time, it is clear that proposed cuts in Federal education spending will make it increasingly difficult to defend women's rights and civil rights programs. (MJL)

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Will Title IX Survive the '80s?: The Federal View

A Paper Presented at the American Educational Research Association Symposium on "How Is Title IX Faring in the Age of Reagan"

March 22, 1982

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Will Title IX Survive the '80s?: The Federal View

The election of Ronald Reagan in November of 1980 sent tremors throughout the community of feminists committed to educational equity for women. After a series of national presidents who had given lip service and some support to the cause of women's equality, the prospect of a conservative president firmly opposed to the Equal Rights Amendment threatened hard times ahead for women's rights.

This paper explores the attacks on Title IX and other federal laws and policies supporting equal access for both sexes to American education which have emerged at the federal level during the first year of the Reagan era. It discusses the response from women's groups and other equity advocates, and assesses the results of the pressures and counterpressures which have emerged during the critical first year. Finally, it makes some predictions about further developments, based on the lessons of these recent months.

As the author is a feminist advocate and a participant in these events, this assessment makes no pretense at being objective, disinterested or unbiased. It does, on the other hand, draw its perspective from the author's extensive involvement with federal education policy, spanning nearly a decade and a half and the administrations of five U.S. presidents.

The Assaults Begin: Challenges to Federal Funding for Educational Equity

The opening salvo came even before the November election. On October 29, 1980, the Heritage Foundation, a conservative think tank based in Washington, issued a massive analysis of federal policy and what was quickly hailed as a "conservative agenda" for the Reagan Administration, which then seemed likely to be voted into office. The report, issued late October in an unprinted draft, singled out the only education aid program whose goal was solely the advancement of educational equality for both women and men: the Women's Educational Equity Act (WEEA).

Enacted in 1974, the Women's Education Equity Act had a $10 million appropriation in 1980 to develop, test and disseminate model approaches to fostering equal education for women and girls.

WEEA, reported the Heritage Foundation, was:

> ... more in keeping with extreme feminist ideology than concern for the quality of education.... [It] is a top priority item for the feminist network and is an important resource for the practice of feminist policies and politics.

Therefore, the Foundation went on to say, "its programs require immediate scrutiny and its budget should be drastically cut."[1/]

In general, the report called for a drastically different relationship between the U.S. Department of Education and states and localities: one that would be, in the Heritage Foundation's words, "supportive rather than interventionist."[2/] This characterization of current education policy as "interventionist" would

come up repeatedly over the next few months in conservative efforts to cut back Title IX.

The new president's first major address on his economic recovery program served notice that this president rejected the philosophical foundation for many generations of federal social policy and could be expected to ask for radical changes. Speaking to a rational TV audience on February 18, 1981, the new president declared:

> the taxing power of government must be used to provide revenues for legitimate government purposes. It must not be used to regulate the economy or bring about social change.3/

In line with that philosophy, President Reagan announced plans to eliminate scores of federal "categorical" programs and replace them with "block grants" to states and localities to spend as they wish for general educational purposes. This plan will, he said, "restore more authority to states and local school districts."4/

On March 10, Budget Director David Stockman released the details of the first Reagan budget -- the new Administration's plan to reduce domestic spending over the next five years. The plan called for the immediate elimination of the Women's Educational Equity Act and another civil rights program set up to help school districts end discrimination based on sex, race and national origin -- Title IV of the Civil Rights Act of 1964. Together, WEEA and Title IV represented the only two federal aid programs explicitly designed to foster equal education for girls and women.5/ In place of these and some forty other "categorical"

education programs, Reagan proposed to create an educational block grant allowing states to spend federal money in virtually any way they choose.

On June 10, the Senate Labor and Human Resources Committee voted to eliminate the Women's Educational Equity Act and passed ambiguous language concerning its intentions about Title IV -- it would be a matter of some confusion over the next few weeks whether or not the committee meant to eliminate Title IV as well. In the place of these and several other programs, a bipartisan committee majority voted to establish an educational block grant. The move to eliminate the Women's Educational Equity Act and a number of other programs carried even the support of the Senate sponsor of WEEA, Democratic Senator Donald Riegle of Michigan, who cast his proxy vote for the block grant compromise through the ranking committee Democrat, Senator Edward M. Kennedy (D-MA).

The Second Line of Attack: Title IX Becomes a Target

At the same time the Reagan Administration was moving to eliminate feminist-oriented aid programs, conservatives both inside and outside the Administration were beginning to focus on the law providing legal protection against sex discrimination in schools and colleges receiving federal aid -- Title IX of the Education Amendments of 1972.

On June 11, Senator Orrin Hatch (R-UT), chair of the Labor and Human Resources Committee whose jurisdiction includes education, introduced a bill to curb Title IX in several major respects. The bill, S. 1361, would drastically reduce the impact of Title IX. It would end Title IX coverage of school employment practices and define federal financial aid so as to exclude federal aid to students for the purpose of Title IX coverage. The bill would also limit Title IX protection to only specific activities directly supported by federal funds -- removing athletics and physical education, counseling and many other curriculum areas from Title IX's equal access guarantee. The last provision could also make Title IX generally unenforceable, since someone would presumably have to determine if an activity were backed by federal funding -- something often difficult to do -- before any action could be taken on a case.

Hatch introduced the bill with a statement citing Title IX as a prime example of a federal government run amuck:

> We have indulged in a species of social fanaticism which led us to believe that American society should and could be reshaped in a particular mold by the brute imposition of federal wealth and power upon local schools, colleges, boards of education, indeed upon individual students and families.... The Department of Education and its predecessors, in a protracted pilgrimage to the shrine of social activism, have sought to make Title IX the irresistible engine for bulldozing from the school halls of our nation practically all distinctions based on sex. It has been made an efficient instrument for stamping the rules of statistical equality upon the forehead of every school administrator, teacher and student in America.6/

Hatch argued that Congress never intended that school employees be covered by Title IX, but rather only by the Equal Pay Act of 1963 and Title VII of the 1964 Civil Rights Act, which bars employment discrimination based on race, sex, color or national origin. As to the government's policy that Title IX covers all activities of an education institution receiving federal funds, he demanded:

> What facet of federalism, what practice of sound administration, what principle of fairness requires the federal government to subject to hundreds of pages of regulations the entire range of activities of a school whose modern language program has received a hundred dollar grant or whose only federal contracts are the loans extended its students.7/

Meanwhile, the Reagan Administration was contemplating its own methods of restricting Title IX. In April, Education Secretary Bell released a proposal to remove school dress codes from coverage under Title IX. In August, Vice President George Bush announced that the Title IX intercollegiate sports guidelines would be reviewed by the Presidential Task Force on Regulatory Relief -- singled out with twenty-nine other federal regulations as a target for deregulation. "Concern has been raised," the task force briefing document reported, "about record keeping, overall coverage, and requirements for comparable expenditures for both sexes."8/

During the fall of 1981, internal proposals to restrict Title IX or other sex equity provisions began circulating within the executive branch. Education Secretary Terrel Bell sought Justice Department approval for restrictions on Title IX similar to the ones the Hatch bill would have imposed by legislation;

the removal of employment protections and the elimination of student aid as grounds for Title IX protection were among them. At the same time, a draft vocational education block grant plan, eliminating the requirement for state sex equity coordinators and all language about ending sex bias, was under consideration within the Department of Education.

By the end of the first 10 months of the Reagan era, then, conservatives in Congress and the executive branch had surfaced proposals which would have effectively ended federal support for equal educational opportunity for both sexes. If each of these plans had come to fruition, Title IX would have been severely curtailed, its enforcement thrown into chaos, and federal funding for women's educational equality would have disappeared.

Women's Groups Organize

Around the country and in Washington, networks of feminists concerned about educational equity for women began organizing in the spring of 1981 to defeat the proposals to eliminate WEEA and Title IV and to cut back on Title IX. Many of these networks were informal, statewide and regional in nature, consisting primarily of women and men who work for educational equity around the country in state agencies, in universities, in local school districts. Many are supported by Title IV or the Women's Educational Equity Act, which together represent virtually the only public source of funds for equity of the sexes throughout education. One

national organization, the National Coalition for Sex Equity in Education, served as a central information and coordinating center for some of these professionals. Others had direct access to information on what the government was proposing through contacts in the government, through state officials in Washington, or through national women's organizations.

In addition to these professionals, parents and other community-based people concerned about the issue were also mobilized to oppose the conservative proposals through a broad formal network of national organizations, the National Coalition for Women and Girls in Education. This coalition, whose members include large membership organizations such as the League of Women Voters, the National Education Association, and the American Association of University Women, served in Washington as the chief voice opposing the Reagan plan and was the organizing locus for much of the lobbying in support of Title IX and the two federal aid programs for sex equity.

The most intensive lobbying campaign waged by these groups during the last year was the effort to convince Congress to maintain the Women's Educational Equity Act and Title IV of the 1964 Civil Rights Act as federal programs, and to keep their money out of the education block grant, which was moving through Congress as part of the budget reconciliation bill during the summer of 1981. It would be impossible to document all of the events involved in the lobbying campaign; here follows is a summary of major events observed by one active Washington participant. Given

the somewhat decentralized nature of the campaign, important events occurring outside Washington may be missed in this analysis.

In May of 1981, Coalition representatives testified against the inclusion of these two programs in an education block grant before members of the Senate Education Subcommittee.

> The types of activities that are conducted under the auspices of WEEA and Title IV cannot be handled at state and local levels. Individual states do not have the resources for this kind of materials development nor do they possess mechanisms for national dissemination of projects and programs.9/

Moreover, the Coalition argued that "it is already clear from recent history that most jurisdictions will not use discretionary funds to reduce sex discrimination."10/ Two-thirds of the states, they pointed out, had failed to spend any of their discretionary vocational education funds to reduce sex bias in vocational education, despite the presence of strong language in the Vocational Education Act encouraging states to do so.

The Senate's decision to eliminate WEEA as part of its block grant sent feminist activists back to the strategic drawing boards -- only the House of Representatives could now save the programs. Members of the National Coalition for Women and Girls in Education mapped out a two-part strategy for the House. First, to join with other organizations to oppose block grants per se; several Coalition organizations would join the Ad Hoc Coalition Against Block Grants. Second, as a fallback strategy in case the first failed, Coalition members devised a

"Republican strategy" -- ask Republican women members of the House to ask the Republican House leadership to leave WEEA and Title IV out of the block grant bill the Republicans would offer on the floor.

Coalition representatives met with Massachusetts Republican representative Margaret Heckler and Rhode Island representative Claudine Schneider; several others were approached through members of their staff. Heckler agreed to do what she could. On June 18, Heckler and Schneider sent a letter to Minority Leader Robert Michel (R-IL), urging him to leave these two programs out of the Republican block grant proposal. They argued that:

> States cannot provide the development, technical assistance and national dissemination now supported by these programs.... Our support for these small but significant programs will be evidence that the Republican Party is committed to women. Attached is the latest Harris poll which suggests that we are losing the support of a large number of women.11/

Heckler reinforced this appeal in personal conversations with Minority Leader Michel.

At Heckler's behest, the Women's Educational Equity Act was removed from the House Republican block grant proposal. On June 26, the House of Representatives passed a Republican version of the budget reconciliation bill. Thus, although the Coalition's first strategy was frustrated by the passage of an education block grant, the second strategy paid off: the Women's Educational Equity Act was not included for elimination under the House-passed block grant. As in the Senate, the House-passed

language was somewhat ambiguous in its treatment of Title IV; it was unclear whether or not the program was meant to continue as is or whether it was meant to be eliminated under the block grant plan.

With WEEA maintained as a separate federal program in the House but not the Senate bill, women's equity advocates began to prepare for the House-Senate negotiation on the final bill. A House-Senate "conference committee" would be convened to work out the differences in the education portion of the budget reconciliation bill, including the differences in the block grant provisions.

Women's equity proponents around the country wrote, called and mailgrammed members of the upcoming conference committee urging them to keep WEEA and Title IV. Coalition representatives in Washington contacted congressional staff members and wrote position papers. On July 15, the directors of projects funded by WEEA convened in Washington for a long-planned national conference; many took their own time to visit congressional offices and talk to the staff of conferees about the program. During the process, two California representatives agreed to do everything they could to preserve the programs: Republican Bobbi Fiedler and Democrat George Miller.

July 20, House-Senate conferees met on the education portion of the reconciliation bill. Without discussion, approval to keep Title IV a separate federal program apart from the block grant was voted in response to a joint recommendation by the House-Senate staff. WEEA, however, turned into a major sticking

point. On the House side of the conference table, Representatives Fiedler and Miller led a unanimous and bipartisan group in support of keeping WEEA intact. On the Senate side, the three Republicans, led by Senator Orrin Hatch, insisted on eliminating the program and including its funds in the block grant; the two Democrats supported WEEA but were consistently outvoted by their Republican colleagues. The conferees sought three times during the session to come to agreement on WEEA; each time, each side refused to budge. Finally, when the negotiations were called off about 8:00 p.m. after nearly every other issue had been resolved, the conferees were still at stalemate about what to do with the Women's Educational Equity Act.

Over the next week, equity advocates around the country mobilized to let the conferees know once again that WEEA was an important women's program. Washington lobbyists, particularly the Women's Equity Action League's experienced legislative representative, met with and talked to key members of the conference committee and continued to urge that WEEA be preserved. A great deal of the lobbying focused on Senator Hatch, since he appeared to be the leading holdout on WEEA.

By the following week, Hatch had agreed to change his vote and clear the way for the continuation of WEEA, with a reduced funding authorization of $6 million -- $2 million less than the previous appropriation. The final budget reconciliation bill was signed into law by President Reagan, with both WEEA and Title IV extended for three more years at the federal level.

On Title IX, the action has been less dramatic but the results here too have represented some victories for the supporters of women's equity. While lobbying has been less intense, feminists can claim some credit for the fact that no major changes in Title IX have yet been made, either by Congress or the executive branch.

In a move to head off an executive branch proposal to declare by regulation that Title IX does not cover employment, women's law groups pressed Solicitor General Rex Lee (whose nomination had been opposed by NOW and other groups based on his opposition to ERA) to turn down Education Secretary Bell's request that the regulation be rewritten. This effort was successful; the Justice Department declined the Education Department's proposal to rewrite the policy.

Nor has the Reagan Administration yet come out with regulation changes designed to restrict Title IX to activities directly funded by government grants or to eliminate student aid from the definition of funds used to determine coverage under Title IX. Some version of these proposals may emerge from the Administration. Indications from inside the Administration suggest that top Justice Department officials are wary of announcing sweeping changes.

Equity supporters have focused particularly on organizing constituent mail in support of Title IX and opposing the Hatch bill. Several Coalition groups, including the League of Women Voters and the American Association of University Women, have organized a "Title IX Watch" to alert members particularly

interested in Title IX about any new threats to Title IX, and Title IX Watch members have been writing senators and congresspeople in support of Title IX.

On November 12, Representative Claudine Schneider and several other members of the House of Representatives introduced a resolution declaring that "guidelines relating to Title IX of the Education Amendments of 1972 should not be repealed or altered in a manner which will deny any person equal access to education."12/ By mid-March, the resolution had 105 co-sponsors -- slightly under one-fourth of the House of Representatives.

Meanwhile in the Senate, hearings on the Hatch bill have been scheduled and postponed in December and again in February. Congressional staff indicate that the delays reflect Hatch's own ambivalence about the bill; Hatch having received some criticism because of his sponsorship of the bill, they say, the amendment to Title IX is "not a priority."

Hatch himself has backed off on his bill somewhat in public within recent days. On February 18, he told the Utah Women's State Legislative Council:

> I'm going to reexamine the Title IX bill which I filed because I've had some very good people point out the defects of that bill and we're examining it and looking at it and, of course, we'll keep an open mind on it. We'd love to hear from all of you. And let's see what we can do together for the rights of women in this society.13/

Assessing The Recent History And Looking Ahead -- What To Expect for the '80s

While the Reagan-era maneuvering over federal policy affecting the rights of women in education has just begun, it is possible to draw several conclusions from the experience of Reagan's first year.

First, advocates of women's equality can mobilize a grassroots constituency willing to contact their representatives in Congress. The events of the last year have prompted these women to formalize some of the previously informal advocacy networks and tighten up communications among them. While these networks are clearly no match for the well-organized and financed right-wing networks represented by the Moral Majority, for example, and might lose in a head-to-head confrontation with a major right-wing group like this, it is clear that the women's groups can be effective in the absence of a vocal grassroots opposition.

Second, the feminists' success in defusing opposition from conservatives like Orrin Hatch and winning active support from others such as Representative John Ashbrook (R-OH), who supported WEEA in the budget confrontation, indicates that conservatives can be persuaded to support feminist causes. Both of these men are up for statewide elections next fall: Hatch for reelection to the Senate, and Ashbrook for the Senate in Ohio. Politicians such as these are clearly aware that they need to ameliorate their opposition to women's rights legislation if they are going to draw enough women's votes to win.

Third, it is clear that laws and policies supporting equal rights for women and other groups protected by civil rights laws are and will continue to be a target for conservatives both inside and outside the Administration. While no major changes in Title IX have yet succeeded, we can expect a series of attempts to whittle away at the law or reduce it substantially. Given the success to date of the opposition to the Hatch bill, these are more likely to succeed in a regulatory arena than a congressional one, since the executive branch is better insulated from public pressure. Changes may also come from the courts; several critical issues of Title IX coverage are now being litigated.

Fourth, in the long run, the most serious challenge to Title IX may emerge from the general restructuring of federal support for education. Title IX and two other civil rights laws guaranteeing equal access to education for racial and ethnic minorities and the disabled are tied directly to the eight percent federal contribution to the nation's education spending. As part of the New Federalism plan announced this year, President Reagan is proposing to substantially reduce the federal commitment to education and ask the states to shoulder a higher proportion of education funding. While it is too early to predict the reception this proposal will have during this Congress or the next, we can expect substantial cuts in federal education spending. And if federal support diminishes, support for federally-imposed requirements such as the civil rights laws now provide may be weakened as well.

Finally, although the first skirmish between feminist and civil rights advocates can be counted a victory for equal rights in preserving Title IV and the Women's Educational Equity Act, these groups will find it increasingly difficult to defend these programs from the budget ax once the cuts begin to move deeply into the big education programs with large and well-organized constituencies. If members of Congress feel forced to slash large and popular education programs because of severe economic and political pressures, they may be less likely to have the patience or care to protect these small women's and civil rights programs, no matter how worthy they may find them.

Overall, the last year has been a time of intense challenge to federal policy supporting women's rights, forcing women's groups to organize in new ways to win support from national leaders. The events of the last year suggests that the prospects are not nearly as bleak as the list of challenges might lead one to believe. Women's organizations and other equity networks are alive, well and coming of age politically; they have demonstrated in the early rounds, at least, that they can be effective in an increasingly conservative political environment.

Footnotes

1/ Charles L. Heatherly, ed., Mandate for Leadership: Policy Management in a Conservative Administration (Washington, D.C.: The Heritage Foundation, 1981), pp. 179-180.

2/ Ibid., p. 163.

3/ "Address By the President to a Joint Session of Congress on a Program for Economic Recovery" (Washington, D.C., February 18, 1981), p. 8.

4/ Ibid., p. 3.

5/ A third law, the Vocational Education Act of 1976, requires states to assign a staff person to handle their responsibilities for eliminating sex discrimination in vocational education. Grants and contracts for sex equity projects were permitted and not required.

6/ U.S. Congress, Senate, A Bill to Amend Title IX of the Education Amendments of 1972 Relating to Sex Discrimination, S. 1361, 97th Cong., 1st sess., June 11, 1981, Congressional Record, p. S-6124.

7/ Ibid.

8/ Vice President Bush's Task Force on Regulatory Relief, Existing Regulations to Be Reviewed (Washington, D.C., August 12, 1981), p. 2.

9/ Hearings before the Senate Subcommittee on Education, Arts and the Humanities, 97th Cong., 1st sess., May 8, 1981, Testimony of the National Coalition for Women and Girls in Education, p. 11.

10/ Ibid., p. 12.

11/ Rep. Margaret Heckler and Rep. Claudine Schneider to Rep. Robert Michel, June 18, 1981, U.S. Congress, House of Representatives, Washington, D.C.

12/ U.S. Congress, House of Representatives, A Resolution Expressing the Sense of the House of Representatives with Respect to the Need to Maintain Guidelines Which Ensure Equal Rights With Regard to Education Opportunity, H. Res. 268, 97th Cong., 1st sess., November 12, 1981.

13/ Senator Orrin G. Hatch, address to Women's State Legislative Council of Utah, Salt Lake City, Utah, February 12, 1982.